HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION NO.27281 OF 1995

Between:

Mount Banjara Owners
Association

. . .Petitioner

AND

The Chief Engineer,
Hyderabad Metropolitan Water
Supply & Sewerage Board,
Khairatabad, Hyderabad and others

. . .Respondents

Counsel for the petitioner : Mr. S.Krishna

Counsel for the respondents : None

Dated: 28th June, 2006

: ORDER :

This is a petition by Mount Banjara Owners Association for quashing the bills raised by Hyderabad Metropolitan Water Supply and Sewerage Board (for short 'the Board') for charging water tariff at the commercial rates from the users of the building constructed by M/s.Banjara Construction Company.

In the affidavit filed by Shri E.A.Mirza, who is Secretary of the petitioner association, it has been averred that after constructing flats, the builder handed over possession to the owners in December, 1985. It has been further averred that on an application made by the owners, the Board agreed to change the tariff from 'commercial' to 'domestic'. This was conveyed to the members of the association by Deputy Executive Engineer of the Board, R&D Sub-Division, Water Supply Division-III, Khairatabad, Hyderabad, vide his letter dated 8-8-1990, and with effect from May, 1990, owners of the flats have been paying as per tariff rates prescribed for domestic connection. Their grievance is that without any notice and without giving any opportunity of hearing, the Board raised bills in February and May, 1993 seeking to charge tariff at the commercial rates.

The petitioner has questioned the demand created by the Board on several grounds including the one that before changing their connection from domestic to commercial, the concerned authority did not give the owners of the flats any notice or opportunity of hearing and, thus, they have been condemned unheard.

In the counter-affidavit filed by Shri M.Satyanarayana, General Manager (E) O & M, Division No.6, H.M.W.S. & S Board, an attempt

has been made to question the very locus of the petitioner association to file writ petition. It has been averred that petitioner has not produced any evidence in respect of its assertion of being a registered body and therefore, the writ petition should be dismissed as not maintainable. On merits, it has been averred that tariff was revised with effect from 01.04.1993 vide Board Proceedings No.34 dated 27.03.1993 and bills were issued to the members of the petitioner association because the building in question has 22 residential flats and 12 shops/offices and same falls in the category of Multi-Storied building with more than 10% but less than 30% of plinth area being subjected to
non-domestic use.

I have heard learned counsel for the petitioner and perused the record. Since no one has appeared on behalf of the Board, the Court has been deprived the benefit of projection of case set up by respondents in a correct perspective.

Learned counsel for the petitioner argued and I am inclined to agree with him that the authorities of the Board could not have suo motu revised the nature of water tariff from ‘domestic’ to ‘commercial’ and raised bills against the owners of the premises without giving them action oriented notice and opportunity of hearing. Although the action of the authorities of the Board to raise bills at the rates prescribed for commercial use of water is purely administrative, in my view, before revising the nature of tariff, it was incumbent on them to give notice and opportunity of hearing to the consumers i.e. flat owners, because revision/modification of tariff from domestic to commercial adversely affected their civil right.

On the premise aforementioned, the writ petition is allowed. The decision of the Board to revise the nature of water tariff from domestic to commercial and to raise bills as per the revised tariff is declared illegal and quashed. However, liberty is given to the competent authority to take fresh decision in the matter after giving action oriented

notice and opportunity of hearing to the affected persons.

G.S.SINGHVI, CJ

Date: 28.06.2006

kvni/svs